

## REMARKS

### Interview Summary

The undersigned wishes to thank Examiner Rutao Wu and Supervisory Examiner John Hayes for agreeing to an examiner's interview that was conducted on September 14, 2006.

Discussed were claims 1, 17, and 21 and their patentability under 35 U.S.C. 101. No prior art was discussed.

The examiners pointed out that they considered claims 1-30 and 32-36 as reading on "software per se."

Applicant pointed out support for a system in the specification and the computer system which Applicant contended refuted and overcame the examiners' position regarding claim 1 as reading on "software per se." Applicant also pointed out support for the computer system of claim 17 and the computer readable medium of claim 21 and pointed out that the preamble of those claims read on structure that along with claim 1, met the requirements of *In re Lowry* and *State Street Bank* cases (no citations were discussed).

Upon pointing out the preambles of claims 17 and 21 and discussion of the specification, the examiners agreed to consult the 101 panel again to see if the case was allowable.

Examiner Hayes agreed to contact the undersigned within the next two weeks to further confer on this rejection.

Also discussed was the rejection of claims 21 and 33 under 35 U.S.C. 112, second paragraph regarding the use of the "if" statement. Applicant contended that the claims produce a useful, concrete and tangible result, namely, to "modify the actual availability answer if indicated by the compare instructions (claim 21)." In Applicant's view what happens if the "if" statement does not result in a decision to modify did not affect the useful, concrete and tangible result of the claim.

In a subsequent message left by Supervisory Examiner Hayes, Examiner Hayes indicated that the case could be allowed if claim 17 was amended to include an action of modifying as in claim 21 and if Applicant provided for the record the basis for the statutory subject matter.

argument as stated in the interview for claim 1 and explanation why claims 21 and 33 were not indefinite.

Applicant has amended claims 17, 18 and 21 to delete repeated words.

The examiner rejected Claims 1-15, 17-20 under 35 U.S.C. 101 as directed to non-statutory subject matter.

Applicant has amended claim 17 to include the action of modifying the actual availability answer if indicated by the decision. Applicant has also summarized the positions taken during the interview for claims 1, 21 and 33.

With respect to claim 1 applicant provides the following additional arguments.

Claim 1 recites:

1. (Previously Presented) A system for providing availability answers for seating on an airline flight, the system comprises:
  - an availability predictor that produces a predicted answer for seating availability on a competitive flight to the airline flight;
  - an availability system that produces an actual availability answer for the airline flight; and
  - a computing system that includes decision logic to produce a decision with respect to the actual availability answer from the availability system based on comparing the predicted answer from the availability predictor and the actual availability answer from the availability system.

In applicant's specification, applicant discloses "Generally, before booking a flight and issuing a ticket, the seller can send a request for availability information to the airline. In general, a request for availability is sent over a computer network to an airline and is processed in the airline's computer system. An answer to the request is provided from the system." [Specification page 1, lines 20-25]. This feature corresponds to the "an availability system that

produces an actual availability answer for the airline flight" feature of claim 1. Accordingly on this basis alone claim 1 is directed to statutory subject matter.

Claim 1 also recites "a computing system that includes decision logic to produce a decision . . ." Applicant's specification discloses that: "FIG. 1 is a block diagram of a competitive airline availability system." [Specification page 3, lines 2-3]. Page 3 also recites: "FIG. 2A is a flow chart of a process used in the competitive airline availability system of FIG. 3. FIG. 2B is a flow chart of exemplary decision logic used in the competitive availability system of FIG. 3," thus showing processes, e.g., software that execute on the system of FIG. 1.

Support for the feature of "an availability predictor that produces a predicted answer for seating availability on a competitive flight to the airline flight;" is found where Applicant describes: "Referring now to FIG. 8, a table predictor 65c is shown. The table predictor 65c can be in the form of a three-dimensional table that is stored in computer memory."

Accordingly, claim 1 and claim 17 and their respective claims are proper under 35 U.S.C. 101.

The examiner rejected claims 21 and 33 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21 and 33 are proper under 35 U.S.C. 112, second paragraph regarding the use of the "if" statement. Applicant contends that the claims produce a useful, concrete and tangible result, namely, to "modify the actual availability answer if indicated by the compare instructions (claim 21)." In Applicant's view what happens when the "if" statement does not result in a decision to modify did not affect the useful, concrete and tangible result of the claim and the claim sufficiently points out the novel features of the invention.

It is not the purpose of the claims to recite operable embodiments or non-essential features but rather to define new and non-obvious subject matter of what the applicant regards as his invention. One of ordinary skill in the art would understand the metes and bounds of the invention as claimed in claims 21 and 33. On the other hand, Applicant's specification (e.g., "the modification logic would not change the potential answer issued by the availability system

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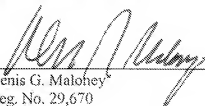
16." [Specification page 6, lines 14-16]) clearly describes what happens if the modification is not needed, namely returning of the unmodified answer.

In view of the above amendments and remarks and the discussions in the examiner interview, it is submitted that the case is in condition for allowance.

Please apply any charges or credits to deposit account no. 06-1050.

Respectfully submitted,

Date: 10/25/06

  
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